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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 WORLDSLIDE, LLC, a Delaware Limited
12 Liability Company,

13 Plaintiff,

14 v.

15 WHAM-O, INC., a Delaware Corporation and
16 BRANDS ON SALE, INC., a California
17 corporation,

18 Defendants.

CASE NO.

RE: 830: Patent

**COMPLAINT FOR
PATENT INFRINGEMENT**

DAMAGES AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

[35 USC § 271, §§ 281-285]

19 Plaintiff alleges:

JURISDICTION AND VENUE

20 1. This action arises under the patent laws of the United States 35 U.S.C. § 271, §§ 281-
21 285. Jurisdiction is therefore proper under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

22 2. Venue in this judicial district is proper under 28 U.S.C. § 1391 (b) and (c) and § 1400.
23 Defendants have on a continual basis committed the acts alleged below within the Eastern
24 District of California, in business interactions purposefully elicited by defendants with or
25 directed to residents of the District, including, inter alia, actively soliciting and causing
26 infringing, using and sales within and from the District, promotion and media advertising within
27 and from the District, and other acts which harms plaintiff within the district.

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THE PARTIES

3. Plaintiff WORLDSLIDE, LLC ("Worldslide") is a Delaware Limited Liability Company registered with the California Secretary of State and having its principal office in Napa, Napa County, California.

4. Defendant WHAM-O, Inc. ("Wham-O") is a Delaware Corporation registered with the California Secretary of State and having a California agent for service of process and having its principal office in Emeryville, Contra Costa County, California.

5. Wham-O's agents sold to consumers at and with the permission of Wham-O infringing products manufactured by Wham-O at various stores within the Eastern District of California.

6. Defendant Brands on Sale, Inc. ("Brands") is a California Corporation located at 2466 Lugonia Ave, Redlands CA 92374.

CLAIM FOR RELIEF

(Infringement of U.S. Patent Number 7,309,302)

7. On December 18, 2007, United States Patent 7,309,302 (the "'302 Patent"), entitled "Sliding Exercise Apparatus and Recreational Device" was duly and legally issued by the United States Patent and Trademark Office. Plaintiff is the assignee of the '302 Patent.

8. Defendants have been and are directly infringing, actively inducing others to infringe, and/or contributing to or inducing the infringement of the '302 Patent in this district and elsewhere.

9. Upon information and belief, Defendants will continue to infringe the '302 Patent unless and until it is enjoined by this Court.

10. Upon information and belief, Defendants' infringement of the '302 Patent is taking place with knowledge of the '302 Patent and is willful. By continuing to commit acts of infringement with full knowledge of the '302 patent, Defendants have failed to meet the required standard of care to avoid a finding of willful infringement.

11. Defendants have caused and will continue to cause Defendants irreparable injury and damage by infringing the '302 Patent. Defendants will suffer further injury, for which

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1 Defendants have no adequate remedy at law, unless and until Defendants are enjoined from
2 infringing the '302 Patent.

3 12. Wham-O has sold or is selling or deriving revenue from sales or has in inventory the
4 following infringing products, known at least at one time by the following names: Splash Tunnel,
5 Splash Tunnel Pirate Ship and Super Splash Tunnel Car Wash. To the extent that these products
6 may have been sold to consumers or manufactured prior to December 18, 2007, such activities
7 would not have infringed. Such activities prior to December 18, 2007 do not shield activities
8 after December 18, 2007. Wham-o did not recall the products on December 18, 2007 or
9 thereafter from wholesalers, distributors or retailers.

10 13. On July 15, 2010, Brands sold an infringing product, which had been offered for sale
11 on a Brands' Web Site and described as "Wham-O Inflatable Splash Tunnel Giant slip N Slide"
12 coded as HG-005220 and priced at \$599.99.

13 14. Wham-o in failing to reasonably remove the infringing products from the market place
14 or stop infringing use after December 18, 2007 became a contributory infringer by encouraging
15 infringing sale and use of the products.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment as hereafter set forth:

18 A. For judgment that Defendants have infringed the '302;

19 B. Order that the Defendants and its officers, agents, servants, employees, attorneys,
20 and all persons in active concert or participation with any of them from infringing the '302
21 Patent;

22 C. Award Plaintiff damages in amounts sufficient to compensate them for Defendants'
23 infringement of the '302 Patent, together with prejudgment and post judgment interest and costs,
24 pursuant to 35 U.S.C. §284;

25 D. Treble the damages awarded to Plaintiff against Defendants, by reason of
26 Defendant's willful infringement of the '302 Patent;

27 E. Declare this case to be "exceptional" under 35 U.S.C. §285 and award Plaintiff its

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1 attorneys' fees, expenses, and costs incurred in this action;

2 F. Award Plaintiff preliminary and permanent injunctive relief, enjoining Defendants,
3 and each of them, from directly or indirectly infringing the '302 Patent; and

4 G. Award Plaintiff such other and further relief as the court may deem just and proper.

5
6 BERNHEIM, GUTIERREZ & McCREADY

7 Date: July 29, 2010

William S. Bernheim
8 William S. Bernheim
9 Attorney for Plaintiff

10 **JURY TRIAL DEMAND**

11 Pursuant to Fed Rule Civ. P. 38(b), 5(d) and Eastern district of California Local Rule 38-201,
12 Plaintiff demands a jury trial of all issues triable by jury.

13
14 BERNHEIM, GUTIERREZ & McCREADY

15 Date: July 29, 2010

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17 Attorney for Plaintiff

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